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**FEDERAL ELECTION COMMISSION**

999 E Street, N.W.  
Washington, D.C. 20463

**FIRST GENERAL COUNSEL'S REPORT**

**CELA**

MURs: 7031 / 7034

DATE OF NOTIFICATIONS:

March 29, 2016; April 4, 2016; Sept. 1, 2016

DATE OF LAST RESPONSE: October 11, 2016

DATE ACTIVATED: October 11, 2016

EXPIRATION OF SOL: July 13, 2020

ELECTION CYCLE: 2016

**COMPLAINANTS:**

MUR 7031 (March 22, 2016)

Campaign Legal Center

Democracy 21

Lawrence M. Noble

MUR 7034 (March 31, 2016)

End Citizens United

**RESPONDENTS:**

Children of Israel, LLC

Saul A. Fox

Benjerome Trust

Shaofen "Lisa" Gao

Pursuing America's Greatness and Bryan Jeffrey

in his official capacity as treasurer

Stand For Truth, Inc. and D. Eric Lycan

in his official capacity as treasurer

Unknown other individuals

**RELEVANT STATUTES**

**AND REGULATIONS:**

52 U.S.C. §§ 30102, 30103, 30104

52 U.S.C. § 30122

11 C.F.R. §§ 110.1(e), (g)

11 C.F.R. § 110.4(b)

**INTERNAL REPORTS CHECKED:**

Disclosure reports

**FEDERAL AGENCIES CHECKED:**

None

**I. INTRODUCTION**

This matter involves an allegation that Shaofen "Lisa" Gao and unknown other individuals violated 52 U.S.C. § 30122 by contributing \$550,000 in the name of Children of

1 Israel, LLC ("Children LLC") to two independent-expenditure-only political committees,  
2 Pursuing America's Greatness ("PAG") and Stand For Truth, Inc. ("SFT"). Complainants also  
3 allege that Children LLC knowingly permitted its name to be used to make these contributions,  
4 and failed to register and report as a political committee. One of the complaints additionally  
5 alleges that the recipient committees knowingly accepted the prohibited contributions.

6 On balance, the record supports the inference that Children LLC was not the true source  
7 of the contributions to PAG and SFT, because Gao or others may have provided funds to  
8 Children LLC for the specific purpose of making these contributions. Accordingly, we  
9 recommend that the Commission find reason to believe that Gao, Children LLC, and other  
10 unknown individuals violated 52 U.S.C. § 30122, and conduct an investigation.

11 Additional facts are needed to establish whether Children LLC met the requirements for  
12 political committee status, whether PAG or SFT knowingly accepted a contribution in the name  
13 of another, and whether any of the Respondents may have violated the Commission's LLC  
14 attribution rules at 11 C.F.R. § 110.1(g). Our proposed investigation will also likely provide  
15 additional relevant information. Accordingly, we recommend that the Commission take no  
16 action at this time as to these allegations.

## 17 **II. FACTUAL BACKGROUND**

### 18 **A. Respondents**

19 Children of Israel, LLC is a single-member limited liability company ("LLC") formed in  
20 California on June 8, 2015.<sup>1</sup> Shaofen "Lisa" Gao is Children LLC's manager and registered

<sup>1</sup> See "Children of Israel, LLC" Dun & Bradstreet Report; "Children of Israel, LLC" Business Entity Detail, California Sec'y of State, <http://kepler.sos.ca.gov> (June 16, 2016). Children's organizing paperwork indicates that it is located at 18921 Loree Ave., Cupertino, CA 95014. However, Children's registered address is 19821 Loree Ave., Cupertino, CA 95014; the street number in that address appears to have been inadvertently transposed, as "19821 Loree Ave." is not a real street address and, on FEC disclosure reports, Children is repeatedly listed as being located at "18921 Loree Ave., Cupertino, CA 95014." See "Children of Israel, LLC" Dun & Bradstreet Report. "18921

1 agent.<sup>2</sup> In its filing with the California Secretary of State, Children LLC listed “donations” as its  
2 “type of business” and it acknowledges making political donations.<sup>3</sup> During the 2016 election  
3 cycle, Children LLC purportedly made four contributions totaling \$550,000 to PAG and SFT,  
4 and four contributions totaling \$334,000 to the Republican National Committee (“RNC”).<sup>4</sup> In  
5 addition to making these political contributions, Children also claims that it donated funds to  
6 certain charitable organizations.<sup>5</sup>

7 Children LLC has a single member, a living trust called Benjerome Trust.<sup>6</sup> Benjerome  
8 Trust, in turn, has a sole trustee and beneficiary, Saul A. Fox,<sup>7</sup> who is the Chief Executive of Fox  
9 Paine & Company.<sup>8</sup> Fox has made contributions in his own name,<sup>9</sup> and has also directed

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Loree Ave.” is also listed as the mailing address for Children and Gao on their joint designation of counsel form in this matter. *See* Designation of Counsel, Children of Israel, LLC and Shaofen Gao (Apr. 11, 2016).

<sup>2</sup> *See* Children of Israel, LLC and Shaofen Gao Resp. at 1 (May 13, 2016) (“Children Resp.”). As Children’s manager, Gao claims to have “sole and absolute discretion” in the management of the LLC. Gao is a realtor in California, working with a brokerage called Happy Realty. *See* “Happy Realty” <http://happyrealty.org/meetourteam> (June 16, 2016). Gao lists 18921 Loree Ave., Cupertino, CA as her mailing address on her real estate license, and an apparently erroneous version of the address — “19821 Loree Ave” — is listed as her mailing address on Children’s statement of information on file with the California Secretary of State. *See* “Gao, Shaofen” Public License Information, State of California, Dept. of Consumer Affairs, Bureau of Real Estate, <http://www2.dre.ca.gov/PublicASP/pplinfo.asp?start=1> (June 15, 2016); “Children of Israel, LLC” Business Entity Detail, California Sec’y of State, <http://kepler.sos.ca.gov> (June 16, 2016).

<sup>3</sup> *See* Children Resp. at 2.

<sup>4</sup> *See* Pursuing America’s Greatness 2015 Year-End Report at 6, 7 (Jan. 31, 2016); Stand ForTruth, Inc. Amended January 2016 Monthly Report at 8 (Apr. 25, 2016); Stand ForTruth, Inc. March 2016 Monthly Report at 7 (Apr. 20, 2016); RNC Amended 2015 Year-End Report at 5604, 5626, 5643, 5646 (May 13, 2016). Children’s contributions to the RNC were also attributed to Saul Fox. *See id.* at 5605, 5626, 5643, 5647.

<sup>5</sup> *See* Children Resp. at 2 (stating that Children LLC made “charitable contributions of \$150,000 to American Friends of Shavei Yisrael, Inc.,” a “501(c)(3) public charity.”); Saul A. Fox and Benjerome Trust Resp. at 2 (Oct. 11, 2016) (“Fox and Benjerome Resp.”) (asserting that Children LLC has made “charitable contributions to American Friends of Shavei Yisrael, Inc. and Stanford University[.]”).

<sup>6</sup> *See* Children Resp. at 1. An *inter vivos* or living trust is an entity established to hold assets during the life of the trustor, the individual providing the assets; the trust instrument establishes a fiduciary relationship between the trustor and the trustee, who manages the assets, typically for the benefit of a specified beneficiary. The trustee and beneficiary can, however, be the same person, as is the case for Benjerome Trust.

<sup>7</sup> *See* Fox and Benjerome Resp. at 1.

<sup>8</sup> Fox Paine is headquartered at 2105 Woodside Road, Suite D, Woodside, CA 94062; that address is listed

1 Benjerome Trust to make contributions in this election cycle, *e.g.*, the trust made three  
2 contributions of \$100,200 each to the RNC on March 15, 2016, and made another \$33,400  
3 contribution to the RNC on March 29, 2016.<sup>10</sup>

4 Pursuing America's Greatness ("PAG") is an independent-expenditure-only committee  
5 formed on March 11, 2015. Bryan Jeffrey is its treasurer of record.<sup>11</sup> PAG has made over \$3.5  
6 million in independent expenditures in support of Gov. Mike Huckabee or in opposition to  
7 Huckabee's opponents in the 2016 presidential election.<sup>12</sup> PAG reported receiving \$50,000 from  
8 Children LLC on July 13, 2015, and \$100,000 from Children LLC on November 13, 2015.<sup>13</sup>

9 Stand ForTruth, Inc. ("SFT") is an independent-expenditure-only committee formed on  
10 November 18, 2015. D. Eric Lycan is its treasurer of record.<sup>14</sup> SFT has made over \$9.5 million  
11 in independent expenditures in support of Sen. Ted Cruz or in opposition to Cruz's opponents in  
12 the 2016 presidential election.<sup>15</sup> SFT reported receiving \$250,000 from Children LLC on

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on disclosure reports filed with the Commission as the address for Saul Fox and Children. *See* RNC Amended 2015 Year-End Report at 5604-05, 5626, 5643, 5646-47 (May 13, 2016); "Fox Paine - Our Firm - Saul A. Fox, Chief Executive," <http://www.foxpaine.com/our-firm.html> (June 15, 2016).

<sup>9</sup> *See* Huckabee for President, Inc. Amended 2015 July Quarterly Report at 142 (Oct. 21, 2015); Cruz for President, 2016 May Monthly Report at 9610 (May 20, 2016). In the relevant disclosure reports, both committees reported Fox's address as the "2105 Woodside Road" address associated with Fox Paine's headquarters. *Id.*

<sup>10</sup> *See* RNC March 2015 Monthly Report at 921, 2262-2263 (Apr. 20, 2016). On the RNC's disclosure reports, Benjerome Trust's address is also the "2105 Woodside Road" location linked to Saul Fox and Fox Paine.

<sup>11</sup> PAG, Statement of Organization at 1 (Mar. 11, 2015).

<sup>12</sup> *See, e.g.*, PAG, 24/48 Hour Independent Expenditure Report ("IE Report") (Oct. 20, 2015); IE Report (Oct. 23, 2015); IE Report (Nov. 10, 2015); IE Report (Nov. 19, 2015); IE Report (Nov. 27, 2015); IE Report (Dec. 2, 2015); IE Report (Dec. 8, 2015).

<sup>13</sup> *See* note 4, *supra.*

<sup>14</sup> SFT, Statement of Organization at 1 (Nov. 18, 2015).

<sup>15</sup> *See, e.g.*, SFT, 24/48 Hour Independent Expenditure Report ("IE Report") (Dec. 10, 2015); IE Report (Dec. 30, 2015); IE Report (Jan. 13, 2016); IE Report (Jan. 21, 2016); IE Report (Jan. 13, 2016); IE Report (Jan. 21, 2016); IE Report (Jan. 25, 2016).

January 26, 2016, and \$150,000 from Children LLC on March 18, 2016.<sup>16</sup>

**B. The Complaint and Response**

The Complaints in MURs 7031 and 7034, which are based on a news article that appeared in the Washington Post on March 18, 2016,<sup>17</sup> allege that Gao and other unknown individuals made, and Children LLC knowingly facilitated, contributions in the name of another to PAG and SFT between September 2015 and January 2016, in violation of 52 U.S.C. § 30122, a provision of the Federal Election Campaign Act of 1971, as amended ("Act").<sup>18</sup> Complainants also allege that Children LLC violated the Act for failing to register and report as a political committee. The Complaint in MUR 7034 additionally claims that PAG and SFT knowingly accepted the contributions in the name of another.<sup>19</sup>

Children LLC and Gao filed a response stating that Children LLC is a single-member entity created to make charitable and political donations, and that Gao, as its manager, has sole discretion over the entity's decisions.<sup>20</sup> They assert that Children LLC made, and was properly reported as the source of, the political contributions at issue. They also claim that it would be "manifestly unfair" to analyze its contributions under Section 30122 of the Act because at the

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<sup>16</sup> See note 4, *supra*.

<sup>17</sup> See MUR 7031 Compl. at 3 (Mar. 22, 2016), MUR 7034 Compl. at 2 (Mar. 31, 2016) (both citing Matea Gold and Anu Narayanswamy, How "Ghost Corporations" are Funding the 2016 Election, WASH. POST (Mar. 18, 2016), [https://www.washingtonpost.com/politics/how-ghost-corporations-are-funding-the-2016-election/2016/03/18/2446e526-ed14-11e5-a6f3-21ccdbc5f74e\\_story.html](https://www.washingtonpost.com/politics/how-ghost-corporations-are-funding-the-2016-election/2016/03/18/2446e526-ed14-11e5-a6f3-21ccdbc5f74e_story.html)); see also Matea Gold, More Mystery Corporate Donations Flow to Presidential Super PACs, WASH. POST (Mar. 22, 2016), <https://www.washingtonpost.com/news/post-politics/wp/2016/03/22/more-mystery-corporate-donations-flow-to-presidential-super-pacs>.

<sup>18</sup> MUR 7031 Compl. at 1–2.

<sup>19</sup> MUR 7034 Compl. at 2–3.

<sup>20</sup> Children Resp. at 1–2 (May 13, 2016).

1 time that Children LLC made these contributions, the regulated community was not "on notice"  
2 that Section 30122 applied in this context.<sup>21</sup>

3 SFT denies the allegations and contends that it sought confirmation on two occasions that  
4 the contributions it received from Children LLC were permitted under the Act.<sup>22</sup> On both  
5 occasions, SFT asserts, Children LLC confirmed that the funds it contributed were permitted,  
6 *i.e.*, Children LLC maintained that the funds did not come from a foreign source and were  
7 properly reportable as contributions from Children LLC.

8 PAG acknowledges that it received two contributions from Children LLC totaling  
9 \$150,000, but denies that it violated the Act.<sup>23</sup> PAG discusses the lack of regulatory clarity  
10 provided by the Commission's precedents,<sup>24</sup> and notes that the contributions at issue were made  
11 before the Commission put the regulated community "on notice" that LLC contributions could  
12 be treated as contributions in the name of another.<sup>25</sup> PAG argues that since its legal duties under  
13 these circumstances remain unclear, the allegations against it should be dismissed.

14 Saul Fox and Benjerome Trust filed a joint response on October 11, 2016.<sup>26</sup> Fox and  
15 Benjerome contend that the Commission's LLC attribution regulations do not apply to

<sup>21</sup> *Id.* at 2–3 (quoting Statement of Reasons of Chairman Matthew S. Petersen and Commissioners Caroline C. Hunter and Lee E. Goodman at 8, MUR 6485 (W Spann LLC, *et al.*), MURs 6487/6488 (F8, LLC, *et al.*), MUR 6711 (Specialty Investment Group, Inc., *et al.*), MUR 6930 (SPM Holdings LLC, *et al.*) (Apr. 1, 2016) ("LLC SOR") ("[P]ursuing enforcement against the Respondents in these matters would be manifestly unfair because Commission precedent does not provide adequate notice regarding the application of section 30122 to closely held corporations and corporate LLCs or the proper standards for its application.")).

<sup>22</sup> See SFT First Resp. at 1 (Apr. 19, 2016); SFT Second Resp. at 1 (Apr. 27, 2016).

<sup>23</sup> See PAG Resp. at 1 (May 12, 2016).

<sup>24</sup> *Id.* at 2–4.

<sup>25</sup> *Id.* at 7–9; see LLC SOR at 8.

<sup>26</sup> Fox and Benjerome Resp. at 1. The Office of the General Counsel provided Saul A. Fox and Benjerome Trust with notice of the complaints and an opportunity to respond after determining, based on the available information in the record, that they may have violated the Act or the Commission's regulations. See Letter from

1 contributions made to independent-expenditure-only committees such as PAG or SFT, because  
2 LLCs are permitted to make unlimited contributions to such committees.<sup>27</sup> They further argue  
3 that at the time of the contributions, they were not "on notice" that the Commission would apply  
4 the LLC attribution rules to such contributions.<sup>28</sup> Moreover, they contend that neither Fox nor  
5 Benjerome made excessive contributions to the RNC.<sup>29</sup>

### 6 III. FACTUAL AND LEGAL ANALYSIS

#### 7 A. Contributions in the Name of Another

##### 8 1. Legal Standard

9 The Act provides that a contribution includes "any gift, subscription, loan, advance, or  
10 deposit of money or anything of value made by any person for the purpose of influencing any  
11 election for Federal office."<sup>30</sup> The term "person" for purposes of the Act and Commission  
12 regulations includes partnerships, corporations, and "any other organization or group of  
13 persons."<sup>31</sup> The Act prohibits a person from making a contribution in the name of another  
14 person, knowingly permitting his or her name to be used to effect such a contribution, or

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Mark Shonkwiler, Asst. Gen. Counsel, FEC, to Saul A. Fox (Sept. 1, 2016); Letter from Mark Shonkwiler, Asst. Gen. Counsel, FEC, to Benjerome Trust (Sept. 1, 2016).

<sup>27</sup> Fox and Benjerome Resp. at 2-3.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* at 4.

<sup>30</sup> 52 U.S.C. § 30101(8)(A).

<sup>31</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that "all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate." 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. See 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to "contributions by a person made on behalf of or to a candidate." *Id.* By their terms, neither the earmarking provision of the Act nor the Commission's implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

1 knowingly accepting such a contribution.<sup>32</sup> The Commission has included in its regulations  
2 illustrations of activities that constitute making a contribution in the name of another:

- 3 (i) Giving money or anything of value, all or part of which was provided  
4 to the contributor by another person (the true contributor) without  
5 disclosing the source of money or the thing of value to the recipient  
6 candidate or committee at the time the contribution is made; or
- 7 (ii) Making a contribution of money or anything of value and attributing  
8 as the source of the money or thing of value another person when in  
9 fact the contributor is the source.<sup>33</sup>

10 The requirement that a contribution be made in the name of its true source promotes  
11 Congress's objective of ensuring the complete and accurate disclosure by candidates and  
12 committees of the political contributions they receive.<sup>34</sup> Courts therefore have uniformly  
13 rejected the assertion that "only the person who actually transmits funds . . . makes the  
14 contribution,"<sup>35</sup> recognizing that "it is implausible that Congress, in seeking to promote  
15 transparency, would have understood the relevant contributor to be [an] intermediary who

<sup>32</sup> 52 U.S.C. § 30122.

<sup>33</sup> 11 C.F.R. § 110.4(b)(2)(i)–(ii). See First Gen. Counsel's Report, MUR 6930 (Prakazrel "Pras" Michel, *et al.*). In MUR 6930, we concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC's operations and investments, not a transfer of funds from the owner's personal accounts; and (3) the owner did not seek to use the LLC to evade the Act's disclosure requirements. Accordingly, we recommended that the Commission find no reason to believe that Respondents violated § 30122. The Commission was equally divided on that issue, however, and closed the file. See Certification, MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other closed matters involving LLC contributions to independent-expenditure-only committees. See Certification, MUR 6485 (W Spann LLC, *et al.*) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, *et al.*) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, *et al.*) (Feb. 24, 2016). The issue has also been raised in several reports currently pending before the Commission. See, e.g., First Gen. Counsel's Report, MUR 6968 (Tread Standard LLC, *et al.*) (open matter); First Gen. Counsel's Report, MUR 6969 (MMWP12 LLC, *et al.*) (open matter); First Gen. Counsel's Report, MUR 6995 (Right to Rise, *et al.*) (open matter); First Gen. Counsel's Report, MURs 7013 / 7015 (IGX, LLC, *et al.*) (open matter).

<sup>34</sup> *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

<sup>35</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).



1 merely transmitted the campaign gift.”<sup>36</sup> Consequently, both the Act and the Commission’s  
2 implementing regulations provide that a person who furnishes another with funds for the purpose  
3 of contributing to a candidate or committee “makes” the resulting contribution.<sup>37</sup> This is true  
4 whether funds are advanced to another person to make a contribution in that person’s name or  
5 promised as reimbursement of a solicited contribution.<sup>38</sup> Because the concern of the law is the  
6 true source from which a contribution to a candidate or committee originates, we look to the  
7 structure of the transaction itself and the arrangement between the parties to determine who in  
8 fact “made” a given contribution.<sup>39</sup>

9           2.     The Record Supports a Reasonable Inference that Children LLC Was Not  
10                the True Source of the Contributions under Section 30122 of the Act

11           The factual record, viewed as a whole, supports a reasonable inference that Children LLC  
12 was not the “true source” of the funds contributed to PAG and SFT. Children LLC admits that it  
13 was formed for the purpose of making “donations.” It also began making contributions shortly

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<sup>36</sup>     *O'Donnell*, 608 F.3d at 554; *see also Citizens United v. FEC*, 558 U.S. 310, 371 (2010) (“The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages.”); *Doe v. Reed*, 561 U.S. 186, 199 (2010) (“Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.”).

<sup>37</sup>     *See Boender*, 649 F.3d at 660 (holding that to determine who made a contribution “we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee.” (emphasis added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) (“The Act prohibits the use of ‘conduits’ to circumvent . . . [the Act’s reporting] restrictions.” (quoting then-Section 441f)).

<sup>38</sup>     *O'Donnell*, 608 F.3d at 555. Moreover, the “key issue . . . is the *source* of the funds” and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is “irrelevant to a determination of who ‘made’ the contribution for the purposes of [Section 30122].” *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant’s “unconditional gifts” to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

<sup>39</sup>     As the court in *O'Donnell* acknowledged, the Commission’s earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control “over the choice of the recipient candidate.” 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

1 after being formed, and contributed \$884,000 within nine months, despite having no apparent  
2 financial means to make these contributions without receiving outside funds provided for that  
3 specific purpose.<sup>40</sup> Further, Children LLC has not provided sufficient facts to overcome the  
4 inference that another person provided it with funds for it to make these contributions.

5 First, Children LLC acknowledges that its primary — and perhaps only — organizational  
6 function is to make contributions to other entities, including political committees. Children LLC  
7 does not claim, and the available facts do not show, that the LLC conducts any other business; it  
8 appears to exist solely as a conduit to collect and donate others' money.<sup>41</sup> Unlike a political  
9 committee, which must disclose the sources of its funds, this type of conduit contribution vehicle  
10 undermines the public disclosure that is necessary for "citizens and shareholders to react to the  
11 speech of corporate entities in a proper way."<sup>42</sup> Although an LLC is a legally distinct "person"  
12 and is entitled, under prevailing law, to make contributions in its own name, it must be the true  
13 source of the funds that it seeks to contribute.

14 Second, the temporal proximity between Children LLC's formation and its contributions,  
15 viewed in the context of the LLC's purpose, strongly suggests that it received funds for the  
16 specific purpose of making these contributions. Children LLC was formed on June 8, 2015.  
17 Five weeks later, on July 13, 2015, Children LLC made its first contribution to PAG, the Super  
18 PAC supporting Huckabee's presidential campaign.<sup>43</sup> Over nine months, Children LLC

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<sup>40</sup> Children LLC also claims that it made at least \$150,000 in charitable donations. *See* Children Resp. at 2.

<sup>41</sup> Children Resp. at 2 ("On its Statement of Information filed with the California Secretary of State, Children lists its type of business as "donations." From its inception in June of 2015 to date, Children has operated to make both charitable and permissible political contributions."); *see also* Fox and Benjerome Resp. at 2.

<sup>42</sup> *Citizens United*, 558 U.S. at 371.

<sup>43</sup> Children LLC was formed twelve days after Saul Fox — the sole trustee of the entity that is Children LLC's sole member — made a \$2,700 personal contribution to Huckabee's authorized committee. *See* Huckabee for President, Inc. Amended 2015 July Quarterly Report at 142 (Oct. 21, 2015).

1 contributed a total of \$884,000 to three committees — \$550,000 to PAG and SFT, and \$334,000  
2 to the RNC — in addition to any funds it may have donated to charities.<sup>44</sup> Nevertheless, the  
3 available record provides no indication that Children LLC had the financial means to make these  
4 contributions without an infusion of funds provided to it for that purpose, and Children LLC does  
5 not claim that it possessed such means by, *e.g.*, operating a commercial enterprise, generating  
6 investment income, holding assets, managing funds to engage in nonpolitical activity, or  
7 engaging in any other activity that could plausibly allow it to make the contributions at issue.

8 Third, none of the information provided by Children LLC overcomes the inference drawn  
9 from the available facts, *i.e.*, that it was provided funds for the specific purpose of making these  
10 political contributions. A factually similar matter provides a useful contrast: In MUR 6930, the  
11 sole member of an LLC that contributed to an independent-expenditure-only political committee  
12 provided a detailed, sworn affidavit averring that any funds held by the LLC were *not* provided  
13 to it for the specific purpose of making political contributions. Because the information in the  
14 record was sufficient to rebut the allegations, we recommended that the Commission make a no  
15 reason to believe finding.<sup>45</sup> Here, however, Children LLC and Gao have not addressed the  
16 provenance of the funds that Children LLC gave to these political committees; they do not aver  
17 that these funds were not provided to the LLC for the purpose of making contributions.

18 The Act prohibits “straw man” contributions in which the true contributor provides a  
19 conduit — whether a natural person or an entity — with funds for the purpose of making a

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<sup>44</sup> On July 13, 2015, PAG received \$50,000 from Children LLC; on November 13, 2015, PAG received another \$100,000 from Children LLC. On December 10, 2015, the RNC received \$334,000 in contributions from Children LLC. On January 26, 2016, SFT received \$250,000 from Children LLC. And on March 18, 2016 — the same day that the article prompting the two complaints appeared in the Washington Post — SFT received another \$150,000 from Children LLC. *See* note 4, *supra*.

<sup>45</sup> *See* First Gen. Counsel's Report at 8–10, MUR 6930 (Prakazrel “Pras” Michel, *et al.*); *see also* First Gen. Counsel's Report at 8–11, MURs 7013 / 7015 (IGX, LLC, *et al.*).

1 contribution, and the conduit then uses those funds to make a contribution in its own name.  
2 Neither the corporate nature of the conduit, nor the conduit's legal ownership of the funds,  
3 undermines that conclusion. Viewed in light of Children LLC's admission that its purpose is to  
4 donate the money of others, the facts in this matter raise a strong inference that Children LLC  
5 was not the true source of the contributions. Accordingly, we recommend that the Commission  
6 find reason to believe that Children of Israel, LLC, its manager, Shaofen "Lisa" Gao, and other  
7 unknown individuals violated 52 U.S.C. § 30122, and conduct an investigation.

8 3. The Record Indicates that Children LLC's Purported Contributions to  
9 PAG and SFT Were Not Properly Attributed under the Commission's  
10 Regulations

11 Alternatively, even if Children LLC was the true contributor to PAG and SFT, its  
12 contributions appear to have been improperly attributed. Contributions by an LLC that is  
13 disregarded for tax purposes and does not have a single natural-person member are treated as  
14 partnership contributions, which must be attributed to both the entity and to each of its  
15 members.<sup>46</sup> Furthermore, an LLC must affirm to the recipient committee that it is eligible to  
16 make a contribution, and must indicate how the contribution should be attributed.<sup>47</sup>

17 In the RNC's Amended 2015 Year-End Disclosure Report, Children LLC's four  
18 contributions totaling \$334,000 on December 10, 2015, were attributed to both Children LLC  
19 and Saul Fox.<sup>48</sup> This attribution information indicates that Children LLC is tax-disregarded and  
20 does not have a single natural-person member; therefore, its contributions must be attributed to  
21 Children LLC and its single member, Benjerome Trust. In turn, because Benjerome Trust is a

<sup>46</sup> 11 C.F.R. §§ 110.1(e), (g)(2).

<sup>47</sup> *Id.* § 110.1(g)(5).

<sup>48</sup> RNC Amended 2015 Year-End Report at 5604–5, 5626, 5643, 5646–47 (May 13, 2016); *see* Fox and Benjerome Resp. at 2.

1 living trust, its contributions are attributed to its sole trustee and beneficiary, Saul Fox.<sup>49</sup> Thus,

2 Children LLC's contributions must ultimately be attributed to Children LLC and Saul Fox.

3 However, PAG and SFT attributed the contributions only to Children LLC.<sup>50</sup>

4 PAG claims that it does not know Children LLC's tax election status or whether it has

5 one or more members, and SFT claims that it sought and received reassurance from Children

6 LLC that its contributions were properly attributable to Children LLC.<sup>51</sup> It therefore appears that

7 Children LLC did not provide accurate and complete attribution information to PAG and SFT, as

8 required under 11 C.F.R. § 110.1(g)(5) — even after SFT specifically inquired to confirm that

9 information. We recognize that under prevailing law, either Benjerome or Fox was legally

10 entitled to make contributions to PAG and SFT in his own name, and that the Commission's

11 LLC regulations were primarily implemented to address a concern — circumventing the Act's

12 contribution limits — that does not arise in the context of independent-expenditure-only political

13 committees.<sup>52</sup> Nevertheless, these regulations apply on their face to all LLC contributions —

<sup>49</sup> Advisory Op. 1999-19 at 2 (Chris Cohen for Congress) (Aug. 25, 1999). ("Cohen AO") ("The Commission concludes that a contribution made from your *inter vivos* trust to the Committee is permissible and would be considered a contribution from you, rather than from the trust."); *see also* Advisory Op. 2004-02 at 3 (National Committee for an Effective Congress) (Feb. 26, 2004); Advisory Op. 1999-14 at 2 (Council for a Livable World) (July 16, 1999). Although Children's contributions to the RNC appear to have been correctly attributed to Children and to Fox, Benjerome Trust's contributions to the RNC were not properly attributed: Benjerome Trust made four contributions to the RNC on March 15, 2016, and March 29, 2016, totaling \$334,000, which is the maximum that any "person" can contribute to a national party committee in a calendar year. *See* 52 U.S.C. § 30116(a)(1). The RNC attributed those contributions to Benjerome Trust. However, Benjerome's contributions should have been attributed solely to Fox. *See* Cohen AO at 2. Still, because neither Children nor Fox appears to have made contributions to the RNC in 2016, the record does not indicate that Children, Fox, or Benjerome made excessive contributions to the RNC.

<sup>50</sup> PAG 2015 Year-End Report at 6, 7 (Jan. 31, 2016); SFT Amended January 2016 Monthly Report at 8 (Apr. 25, 2016); SFT March 2016 Monthly Report at 7 (Apr. 20, 2016).

<sup>51</sup> PAG Resp. at 2; SFT First Resp. at 3.

<sup>52</sup> *See* Treatment of Limited Liability Companies Under the Federal Election Campaign Act, 64 Fed. Reg. 37397, 37398 (July 12, 1999).

1 they do not contain any exception for independent-expenditure-only committees — and can  
2 serve an important disclosure function.

3 We anticipate that our proposed investigation will uncover additional information  
4 necessary to resolve this attribution issue, *i.e.*, whether Children LLC was the true contributor of  
5 the funds provided to PAG and SFT. As such, we recommend that the Commission take no  
6 action at this time as to the allegation that Children LLC, its single member, Benjerome Trust,  
7 and Benjerome's sole trustee and beneficiary, Saul Fox, violated 11 C.F.R. § 110.1(g).<sup>53</sup>

8 4. The Commission Should Take No Action at this Time as to PAG and SFT

9 PAG and SFT deny knowingly accepting contributions in the name of another, and the  
10 available information does not refute their denial. Because we recommend that the Commission  
11 conduct an investigation into these contributions, we recommend that the Commission take no  
12 action at this time as to the allegation that PAG and SFT violated 52 U.S.C. § 30122.

13 With respect to the reporting issue, PAG and SFT assert that they were not provided  
14 complete and accurate attribution information by the purported contributor, Children LLC. We  
15 anticipate that our proposed investigation will uncover additional information necessary to  
16 resolve this issue. As such, we recommend that the Commission take no action at this time as to  
17 the allegation that PAG and SFT violated 11 C.F.R. § 110.1(g).

18 **B. Political Committee Status**

19 1. Legal Standard

20 The Act defines a political committee as “any committee, club, association, or other  
21 group of persons” that receives aggregate contributions or makes aggregate expenditures in

<sup>53</sup> The available facts do not raise an inference that Fox provided or reimbursed funds to Children for the specific purpose of making the contributions to PAG and SFT, *i.e.*, that Fox was the “true source” under Section 30122 of the Act. However, if we obtain additional facts to support such an inference, we would then recommend that the Commission make a finding on that issue.

1 excess of \$1,000 during a calendar year.<sup>54</sup> Notwithstanding the threshold for contributions and  
2 expenditures, an organization will be considered a political committee only if its "major purpose  
3 is Federal campaign activity (*i.e.*, the nomination or election of a Federal candidate)."<sup>55</sup> Political  
4 committees are required to register with the Commission, meet organizational and recordkeeping  
5 requirements, and file periodic disclosure reports.<sup>56</sup>

6 2. The Commission Should Take No Action at this Time as to the Allegation  
7 that Children LLC Was Required to Register and Report as a Political  
8 Committee.

9 The complaints allege that Children LLC was required to register and report as a political  
10 committee, essentially arguing that the LLC was both a conduit *and* a political committee.  
11 Children LLC denies the allegation and claims that its major purpose is to make "donations" of  
12 all kinds, including charitable and political contributions, not to influence the election or  
13 nomination of any federal candidate. The available record supports an inference that Children  
14 LLC was not the "true source" of the contributions, but was instead conveying the funds of the  
15 true contributors.<sup>57</sup> If additional facts that support this view, then Children LLC would not  
16 satisfy the statutory threshold for political committee status.<sup>58</sup> Since we propose to conduct an

<sup>54</sup> 52 U.S.C. § 30101(4)(A).

<sup>55</sup> Political Committee Status: Supplemental Explanation and Justification, 72 Fed. Reg. 5595, 5597 (Feb. 7, 2007); *see Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238, 262 (1986).

<sup>56</sup> *See* 52 U.S.C. §§ 30102, 30103, 30104.

<sup>57</sup> *See* 52 U.S.C. § 30101(4)(A); First Gen. Counsel's Report at 14, MUR 6485 (W Spann LLC); *see also* Advisory Op. 1996-18 at 2-3 (Int'l Ass'n of Fire Fighters) (June 14, 1996) ("The conduit [account of labor union's separate segregated fund], therefore, is not accepting or making contributions for the purposes of the Act and is not a political committee that would have to report the receipt and disbursement of such funds.").

<sup>58</sup> If Children LLC was, in fact, the true source of the contributions to PAG, SFT, and the RNC, it would appear to have triggered the statutory threshold for political committee status, and we would then analyze whether it had a "major purpose" of influencing federal elections. On that issue, the available information indicates that Children LLC made \$884,000 in federal political contributions, and also made at least \$150,000 in charitable contributions. Children Resp. at 2. Since we recommend that the Commission investigate whether Children LLC

1 investigation regarding these contributions, we recommend that the Commission take no action  
2 at this time as to the allegation that Children LLC violated 52 U.S.C. §§ 30102, 30103, 30104.

#### 3 **IV. PROPOSED INVESTIGATION**

4 The proposed investigation would seek information regarding the source of the funds  
5 contributed to PAG and SFT, *i.e.*, information indicating whether, and by whom, funds may have  
6 been directed to Children LLC for the purpose of making contributions to those committees. It  
7 would also seek any communications regarding these contributions, and would attempt to  
8 determine Children LLC's tax election status. We will attempt to conduct this investigation  
9 through voluntary means, but we recommend that the Commission authorize the use of  
10 compulsory process.

#### 11 **V. RECOMMENDATIONS**

- 12 1. Find reason to believe that Children of Israel, LLC, Shaofen "Lisa" Gao, and other  
13 unknown respondents violated 52 U.S.C. § 30122;
- 14 2. Take no action at this time as to the allegation that Children of Israel, LLC,  
15 Benjerome Trust, and Saul A. Fox violated 11 C.F.R. § 110.1(g)(5);
- 16 3. Take no action at this time as to the allegation that Children of Israel, LLC violated  
17 52 U.S.C. §§ 30102, 30103, 30104;
- 18 4. Take no action at this time as to Pursuing America's Greatness and Bryan Jeffrey in  
19 his official capacity as treasurer;
- 20 5. Take no action at this time as to Stand ForTruth, Inc. and D. Eric Lyman in his official  
21 capacity as treasurer;
- 22 6. Approve the attached Factual and Legal Analysis;
- 23 7. Authorize the use of compulsory process; and

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was the true source of these contributions, we also recommend taking no action at this time on the political committee status allegation.



8. Approve the appropriate letters.

Lisa J. Stevenson  
Acting General Counsel

Date: 2-8-17

Kathleen M. Guith  
Kathleen M. Guith  
Associate General Counsel for Enforcement

Mark Shonkwiler  
Mark Shonkwiler  
Assistant General Counsel

Saurav Ghosh  
Saurav Ghosh  
Attorney

Attachment  
Factual and Legal Analysis

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

3 RESPONDENTS: Children of Israel, LLC MURs 7031 / 7034  
4 Shaofen "Lisa" Gao  
5 Unknown Respondents  
6

7 **I. INTRODUCTION**

8 These matters were generated by two complaints filed with the Federal Election  
9 Commission ("Commission") by Campaign Legal Center, Democracy 21, and Lawrence M.  
10 Noble (MUR 7031), and End Citizens United (MUR 7034). *See* 52 U.S.C. § 30109(a)(1).  
11 Complainants allege, among other things, that that Shaofen "Lisa" Gao and unknown other  
12 individuals violated 52 U.S.C. § 30122 by contributing \$550,000 in the name of Children of  
13 Israel, LLC ("Children LLC") to two independent-expenditure-only political committees,  
14 Pursuing America's Greatness ("PAG") and Stand ForTruth, Inc. ("SFT"). Complainants also  
15 allege that Children LLC knowingly permitted its name to be used to make these contributions.

16 On balance, the record supports the inference that Children LLC was not the true source  
17 of the contributions to PAG and SFT, because Gao or others may have provided funds to  
18 Children LLC for the specific purpose of making these contributions. Accordingly, the  
19 Commission finds reason to believe that Shaofen "Lisa" Gao, Children of Israel, LLC, and other  
20 unknown individuals violated 52 U.S.C. § 30122.

21 **II. FACTUAL AND LEGAL ANALYSIS**

22 **a. Background**

23 Children of Israel, LLC is a single-member limited liability company ("LLC") formed in  
24 California on June 8, 2015.<sup>1</sup> Shaofen "Lisa" Gao is Children LLC's manager and registered

<sup>1</sup> *See* "Children of Israel, LLC" Dun & Bradstreet Report; "Children of Israel, LLC" Business Entity Detail, California Sec'y of State, <http://kepler.sos.ca.gov> (June 16, 2016). Children's organizing paperwork indicates that it

1 agent.<sup>2</sup> In its filing with the California Secretary of State, Children LLC listed “donations” as its  
2 “type of business” and it acknowledges making political donations.<sup>3</sup> During the 2016 election  
3 cycle, Children LLC purportedly made four contributions totaling \$550,000 to PAG and SFT,  
4 and four contributions totaling \$334,000 to the Republican National Committee (“RNC”).<sup>4</sup> In  
5 addition to making these political contributions, Children also claims that it donated funds to  
6 certain charitable organizations.<sup>5</sup>

7 Children LLC has a single member, a living trust called Benjerome Trust.<sup>6</sup> Benjerome  
8 Trust, in turn, has a sole trustee and beneficiary, Saul A. Fox,<sup>7</sup> who is the Chief Executive of Fox

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is located at 18921 Loree Ave., Cupertino, CA 95014. However, Children’s registered address is 19821 Loree Ave., Cupertino, CA 95014; the street number in that address appears to have been inadvertently transposed, as “19821 Loree Ave.” is not a real street address and, on FEC disclosure reports, Children is repeatedly listed as being located at “18921 Loree Ave., Cupertino, CA 95014.” See “Children of Israel, LLC” Dun & Bradstreet Report. “18921 Loree Ave.” is also listed as the mailing address for Children and Gao on their joint designation of counsel form in this matter. See Designation of Counsel, Children of Israel, LLC and Shaofen Gao (Apr. 11, 2016).

<sup>2</sup> See Children of Israel, LLC and Shaofen Gao Resp. at 1 (May 13, 2016) (“Children Resp.”). As Children’s manager, Gao claims to have “sole and absolute discretion” in the management of the LLC. Gao is a realtor in California, working with a brokerage called Happy Realty. See “Happy Realty” <http://happyrealty.org/meetourteam> (June 16, 2016). Gao lists 18921 Loree Ave., Cupertino, CA as her mailing address on her real estate license, and an apparently erroneous version of the address — “19821 Loree Ave” — is listed as her mailing address on Children’s statement of information on file with the California Secretary of State. See “Gao, Shaofen” Public License Information, State of California, Dept. of Consumer Affairs, Bureau of Real Estate, <http://www2.dre.ca.gov/PublicASP/pplinfo.asp?start=1> (June 15, 2016); “Children of Israel, LLC” Business Entity Detail, California Sec’y of State, <http://kepler.sos.ca.gov> (June 16, 2016).

<sup>3</sup> See Children Resp. at 2.

<sup>4</sup> See Pursuing America’s Greatness 2015 Year-End Report at 6, 7 (Jan. 31, 2016); Stand ForTruth, Inc. Amended January 2016 Monthly Report at 8 (Apr. 25, 2016); Stand ForTruth, Inc. March 2016 Monthly Report at 7 (Apr. 20, 2016); RNC Amended 2015 Year-End Report at 5604, 5626, 5643, 5646 (May 13, 2016). Children’s contributions to the RNC were also attributed to Saul Fox. See *id.* at 5605, 5626, 5643, 5647.

<sup>5</sup> See Children Resp. at 2 (stating that Children LLC made “charitable contributions of \$150,000 to American Friends of Shavei Yisrael, Inc.,” a “501(c)(3) public charity.”); Saul A. Fox and Benjerome Trust Resp. at 2 (Oct. 11, 2016) (“Fox and Benjerome Resp.”) (asserting that Children LLC has made “charitable contributions to American Friends of Shavei Yisrael, Inc. and Stanford University[.]”).

<sup>6</sup> See Children Resp. at 1. An *inter vivos* or living trust is an entity established to hold assets during the life of the trustor, the individual providing the assets; the trust instrument establishes a fiduciary relationship between the trustor and the trustee, who manages the assets, typically for the benefit of a specified beneficiary. The trustee and beneficiary can, however, be the same person, as is the case for Benjerome Trust.

<sup>7</sup> See Fox and Benjerome Resp. at 1.

1 Paine & Company.<sup>8</sup> Fox has made contributions in his own name,<sup>9</sup> and has also directed  
2 Benjerome Trust to make contributions in this election cycle, *e.g.*, the trust made three  
3 contributions of \$100,200 each to the RNC on March 15, 2016, and made another \$33,400  
4 contribution to the RNC on March 29, 2016.<sup>10</sup>

5 Pursuing America's Greatness ("PAG") is an independent-expenditure-only committee  
6 formed on March 11, 2015. Bryan Jeffrey is its treasurer of record.<sup>11</sup> PAG has made over \$3.5  
7 million in independent expenditures in support of Gov. Mike Huckabee or in opposition to  
8 Huckabee's opponents in the 2016 presidential election.<sup>12</sup> PAG reported receiving \$50,000 from  
9 Children LLC on July 13, 2015, and \$100,000 from Children LLC on November 13, 2015.<sup>13</sup>

10 Stand ForTruth, Inc. ("SFT") is an independent-expenditure-only committee formed on  
11 November 18, 2015. D. Eric Lycan is its treasurer of record.<sup>14</sup> SFT has made over \$9.5 million  
12 in independent expenditures in support of Sen. Ted Cruz or in opposition to Cruz's opponents in

<sup>8</sup> Fox Paine is headquartered at 2105 Woodside Road, Suite D, Woodside, CA 94062; that address is listed on disclosure reports filed with the Commission as the address for Saul Fox and Children. *See* RNC Amended 2015 Year-End Report at 5604–05, 5626, 5643, 5646–47 (May 13, 2016); "Fox Paine – Our Firm – Saul A. Fox, Chief Executive," <http://www.foxpaine.com/our-firm.html> (June 15, 2016).

<sup>9</sup> *See* Huckabee for President, Inc. Amended 2015 July Quarterly Report at 142 (Oct. 21, 2015); Cruz for President, 2016 May Monthly Report at 9610 (May 20, 2016). In the relevant disclosure reports, both committees reported Fox's address as the "2105 Woodside Road" address associated with Fox Paine's headquarters. *Id.*

<sup>10</sup> *See* RNC March 2015 Monthly Report at 921, 2262–2263 (Apr. 20, 2016). On the RNC's disclosure reports, Benjerome Trust's address is also the "2105 Woodside Road" location linked to Saul Fox and Fox Paine.

<sup>11</sup> PAG, Statement of Organization at 1 (Mar. 11, 2015).

<sup>12</sup> *See, e.g.*, PAG, 24/48 Hour Independent Expenditure Report ("IE Report") (Oct. 20, 2015); IE Report (Oct. 23, 2015); IE Report (Nov. 10, 2015); IE Report (Nov. 19, 2015); IE Report (Nov. 27, 2015); IE Report (Dec. 2, 2015); IE Report (Dec. 8, 2015).

<sup>13</sup> *See* note 4, *supra*.

<sup>14</sup> SFT, Statement of Organization at 1 (Nov. 18, 2015).

the 2016 presidential election.<sup>15</sup> SFT reported receiving \$250,000 from Children LLC on January 26, 2016, and \$150,000 from Children LLC on March 18, 2016.<sup>16</sup>

**b. Contributions in the Name of Another**

**i. Legal Standard**

The Act provides that a contribution includes “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.”<sup>17</sup> The term “person” for purposes of the Act and Commission regulations includes partnerships, corporations, and “any other organization or group of persons.”<sup>18</sup> The Act prohibits a person from making a contribution in the name of another person, knowingly permitting his or her name to be used to effect such a contribution, or knowingly accepting such a contribution.<sup>19</sup> The Commission has included in its regulations illustrations of activities that constitute making a contribution in the name of another:

- (i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made; or

<sup>15</sup> See, e.g., SFT, 24/48 Hour Independent Expenditure Report (“IE Report”) (Dec. 10, 2015); IE Report (Dec. 30, 2015); IE Report (Jan. 13, 2016); IE Report (Jan. 21, 2016); IE Report (Jan. 13, 2016); IE Report (Jan. 21, 2016); IE Report (Jan. 25, 2016).

<sup>16</sup> See note 4, *supra*.

<sup>17</sup> 52 U.S.C. § 30101(8)(A).

<sup>18</sup> *Id.* § 30101(11); 11 C.F.R. § 100.10. To promote the limits on the amount that any one person may contribute to a candidate in a given election cycle, the Act directs that “all contributions made by a person, either directly or indirectly, on behalf of a particular candidate, including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.” 52 U.S.C. § 30116(a)(8). The Commission has implemented that provision through its earmarking regulation. See 11 C.F.R. § 110.6. Like the statutory provision it implements, the regulation applies only to “contributions by a person made on behalf of or to a candidate.” *Id.* By their terms, neither the earmarking provision of the Act nor the Commission’s implementing regulation reaches contributions made to independent-expenditure-only political committees, as implicated in this matter.

<sup>19</sup> 52 U.S.C. § 30122.

(ii) Making a contribution of money or anything of value and attributing as the source of the money or thing of value another person when in fact the contributor is the source.<sup>20</sup>

The requirement that a contribution be made in the name of its true source promotes Congress's objective of ensuring the complete and accurate disclosure by candidates and committees of the political contributions they receive.<sup>21</sup> Courts therefore have uniformly rejected the assertion that "only the person who actually transmits funds . . . makes the contribution,"<sup>22</sup> recognizing that "it is implausible that Congress, in seeking to promote transparency, would have understood the relevant contributor to be [an] intermediary who merely transmitted the campaign gift."<sup>23</sup> Consequently, both the Act and the Commission's implementing regulations provide that a person who furnishes another with funds for the purpose of contributing to a candidate or committee "makes" the resulting contribution.<sup>24</sup> This is true

<sup>20</sup> 11 C.F.R. § 110.4(b)(2)(i)–(ii). See First Gen. Counsel's Report, MUR 6930 (Prakazrel "Pras" Michel, *et al.*). In MUR 6930, the Office of the General Counsel ("OGC") concluded that the record, considered as a whole, indicated that the LLC, not the individual who owned and operated it, functioned as the true source of the contributed funds, because (1) the LLC was created and used primarily for business purposes, not to make political contributions; (2) the contributions were funded with the proceeds of the LLC's operations and investments, not a transfer of funds from the owner's personal accounts; and (3) the owner did not seek to use the LLC to evade the Act's disclosure requirements. Accordingly, OGC recommended that the Commission find no reason to believe that Respondents violated § 30122. The Commission was equally divided on that issue, however, and closed the file. See Certification, MUR 6930 (Prakazrel "Pras" Michel, *et al.*) (Feb. 25, 2016). The Commission could not reach a decision on this issue in several other closed matters involving LLC contributions to independent-expenditure-only committees. See Certification, MUR 6485 (W Spann LLC, *et al.*) (Feb. 25, 2016); Certification, MUR 6487/6488 (F8 LLC, *et al.*) (Feb. 24, 2016); Certification, MUR 6711 (Specialty Investment Group, *et al.*) (Feb. 24, 2016).

<sup>21</sup> *United States v. O'Donnell*, 608 F.3d 546, 553 (9th Cir. 2010) ("[T]he congressional purpose behind [Section 30122] — to ensure the *complete and accurate disclosure* of the contributors who finance federal elections — is plain.") (emphasis added); *Mariani v. United States*, 212 F.3d 761, 775 (3d Cir. 2000) (rejecting constitutional challenge to Section 30122 in light of compelling governmental interest in disclosure).

<sup>22</sup> *United States v. Boender*, 649 F.3d 650, 660 (7th Cir. 2011).

<sup>23</sup> *O'Donnell*, 608 F.3d at 554; see also *Citizens United v. FEC*, 558 U.S. 310, 371 (2010) ("The First Amendment protects political speech; and disclosure permits citizens and shareholders to react to the speech of corporate entities in a proper way. This transparency enables the electorate to make informed decisions and give proper weight to different speakers and messages."); *Doe v. Reed*, 561 U.S. 186, 199 (2010) ("Public disclosure also promotes transparency and accountability in the electoral process to an extent other measures cannot.").

<sup>24</sup> See *Boender*, 649 F.3d at 660 (holding that to determine who made a contribution "we consider the giver to be the *source* of the gift, not any intermediary who simply conveys the gift from the donor to the donee." (emphasis

whether funds are advanced to another person to make a contribution in that person's name or promised as reimbursement of a solicited contribution.<sup>25</sup> Because the concern of the law is the true source from which a contribution to a candidate or committee originates, the Commission must look to the structure of the transaction itself and the arrangement between the parties to determine who in fact "made" a given contribution.<sup>26</sup>

ii. The Record Supports a Reasonable Inference that Children LLC Was Not the True Source of the Contributions under Section 30122 of the Act

The factual record, viewed as a whole, supports a reasonable inference that Children LLC was not the "true source" of the funds contributed to PAG and SFT. Children LLC admits that it was formed for the purpose of making "donations." It also began making contributions shortly after being formed, and contributed \$884,000 within nine months, despite having no apparent financial means to make these contributions without receiving outside funds provided for that specific purpose.<sup>27</sup> Further, Children LLC has not provided sufficient facts to overcome the inference that another person provided it with funds for it to make these contributions.

First, Children LLC acknowledges that its primary — and perhaps only — organizational function is to make contributions to other entities, including political committees. Children LLC

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added)); *O'Donnell*, 608 F.3d at 550; *Goland v. United States*, 903 F.2d 1247, 1251 (9th Cir. 1990) ("The Act prohibits the use of 'conduits' to circumvent . . . [the Act's reporting] restrictions." (quoting then-Section 441f)).

<sup>25</sup> *O'Donnell*, 608 F.3d at 555. Moreover, the "key issue . . . is the *source* of the funds" and, therefore, the legal status of the funds when conveyed from a conduit to the ultimate recipient is "irrelevant to a determination of who 'made' the contribution for the purposes of [Section 30122]." *United States v. Whittemore*, 776 F.3d 1074, 1080 (9th Cir. 2015) (holding that defendant's "unconditional gifts" to relatives and employees, along with suggestion they contribute the funds to a specific political committee, violated Section 30122 because the source of the funds remained the individual who provided them to the putative contributors).

<sup>26</sup> As the court in *O'Donnell* acknowledged, the Commission's earmarking regulations require the entire amount of a contribution to be attributed to both the actual source and the intermediary if the intermediary also exercises direction and control "over the choice of the recipient candidate." 11 C.F.R. § 110.6(d); *O'Donnell*, 608 F.3d at 550 n.2. Those regulations, however, do not apply to contributions made to an independent-expenditure-only political committee.

<sup>27</sup> Children LLC also claims that it made at least \$150,000 in charitable donations. *See* Children Resp. at 2.

1 does not claim, and the available facts do not show, that the LLC conducts any other business; it  
2 appears to exist solely as a conduit to collect and donate others' money.<sup>28</sup> Unlike a political  
3 committee, which must disclose the sources of its funds, this type of conduit contribution vehicle  
4 undermines the public disclosure that is necessary for "citizens and shareholders to react to the  
5 speech of corporate entities in a proper way."<sup>29</sup> Although an LLC is a legally distinct "person"  
6 and is entitled, under prevailing law, to make contributions in its own name, it must be the true  
7 source of the funds that it seeks to contribute.

8 Second, the temporal proximity between Children LLC's formation and its contributions,  
9 viewed in the context of the LLC's purpose, strongly suggests that it received funds for the  
10 specific purpose of making these contributions. Children LLC was formed on June 8, 2015.  
11 Five weeks later, on July 13, 2015, Children LLC made its first contribution to PAG, the Super  
12 PAC supporting Huckabee's presidential campaign.<sup>30</sup> Over nine months, Children LLC  
13 contributed a total of \$884,000 to three committees — \$550,000 to PAG and SFT, and \$334,000  
14 to the RNC — in addition to any funds it may have donated to charities.<sup>31</sup> Nevertheless, the  
15 available record provides no indication that Children LLC had the financial means to make these  
16 contributions without an infusion of funds provided to it for that purpose, and Children LLC does

<sup>28</sup> Children Resp. at 2 ("On its Statement of Information filed with the California Secretary of State, Children lists its type of business as "donations." From its inception in June of 2015 to date, Children has operated to make both charitable and permissible political contributions."); *see also* Fox and Benjerome Resp. at 2.

<sup>29</sup> *Citizens United*, 558 U.S. at 371.

<sup>30</sup> Children LLC was formed twelve days after Saul Fox — the sole trustee of the entity that is Children LLC's sole member — made a \$2,700 personal contribution to Huckabee's authorized committee. *See* Huckabee for President, Inc. Amended 2015 July Quarterly Report at 142 (Oct. 21, 2015).

<sup>31</sup> On July 13, 2015, PAG received \$50,000 from Children LLC; on November 13, 2015, PAG received another \$100,000 from Children LLC. On December 10, 2015, the RNC received \$334,000 in contributions from Children LLC. On January 26, 2016, SFT received \$250,000 from Children LLC. And on March 18, 2016 — the same day that the article prompting the two complaints appeared in the Washington Post — SFT received another \$150,000 from Children LLC. *See* note 4, *supra*.



1 not claim that it possessed such means by, *e.g.*, operating a commercial enterprise, generating  
2 investment income, holding assets, managing funds to engage in nonpolitical activity, or  
3 engaging in any other activity that could plausibly allow it to make the contributions at issue.

4 Third, none of the information provided by Children LLC overcomes the inference drawn  
5 from the available facts, *i.e.*, that it was provided funds for the specific purpose of making these  
6 political contributions. A factually similar matter provides a useful contrast: In MUR 6930, the  
7 sole member of an LLC that contributed to an independent-expenditure-only political committee  
8 provided a detailed, sworn affidavit averring that any funds held by the LLC were *not* provided  
9 to it for the specific purpose of making political contributions. Based on that rebuttal  
10 information, OGC recommended that the Commission make a no reason to believe finding.<sup>32</sup>  
11 Here, by contrast, Children LLC and Gao have not addressed the provenance of the funds that  
12 Children LLC gave to these political committees; they do not aver that these funds were not  
13 provided to the LLC for the purpose of making contributions.

14 The Act prohibits “straw man” contributions in which the true contributor provides a  
15 conduit — whether a natural person or an entity — with funds for the purpose of making a  
16 contribution, and the conduit then uses those funds to make a contribution in its own name.  
17 Neither the corporate nature of the conduit, nor the conduit’s legal ownership of the funds,  
18 undermines that conclusion. Viewed in light of Children LLC’s admission that its purpose is to  
19 donate the money of others, the facts in this matter raise a strong inference that Children LLC  
20 was not the true source of the contributions. Accordingly, the Commission finds reason to  
21 believe that Children of Israel, LLC, Shaofen “Lisa” Gao, and other unknown individuals  
22 violated 52 U.S.C. § 30122.

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<sup>32</sup> See First Gen. Counsel’s Report at 8–10, MUR 6930 (Prakazrel “Pras” Michel, *et al.*).